DECLARATION OF WILDERNESS VALLEY

THIS DECLARATION is made as of the ____ day of September, 2000, by WILDERNESS SOUTH, L.L.C., a Kansas limited liability company ("the **Developer**").

RECITALS:

A. Developer owns the following described real property (together with any land which hereafter may be made subject to this Declaration, as herein provided, the "Neighborhood"):

Lots 1-55 inclusive and Tract A of Wilderness Valley First Plat, a subdivision in the City Overland Park, Kansas filed for record on August 19, 1999 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 112 at Page 5.

- B. Developer intends (but shall not be obligated) to develop the Neighborhood or cause it to be developed by others as a high-quality, single-family residential development.
- C. Developer desires to create a community association, the members of which shall be the owners of individual lots within the Neighborhood, for the purposes of maintaining the appearance and quality of certain common facilities and amenities serving the entire Neighborhood, providing certain services to the lot owners and for the other purposes herein set forth.
- D. Developer desires to establish easements, covenants, conditions, restrictions and obligations upon the Neighborhood, all for the purpose of enhancing and preserving the value, desirability and attractiveness of the Neighborhood.

NOW, THEREFORE, Developer hereby declares that all property within the Neighborhood shall hereafter be held, transferred, sold, conveyed, mortgaged, leased, occupied and used subject to the covenants, conditions, restrictions, assessments, liens, easements, privileges, rights and other provisions hereinafter set forth, all of which shall run with the land and be binding upon all property within the Neighborhood and all parties having or acquiring any right, title or interest in or to any property within the Neighborhood, and shall inure to the benefit of and be a burden upon each owner of land within the Neighborhood.

ARTICLE 1 **DEFINITIONS**

The following terms as used in this Declaration shall have the meanings set forth below unless the context clearly requires otherwise:

- 1.1 "Assessable Lot" means each Lot owned by a person or persons or entity or entities other than Developer or any Builder; provided, however, that a Lot conveyed by Developer to a Builder which is still owned by such Builder on the date which is 14 months after the recording of the deed from Developer to such Builder shall be an Assessable Lot.
- 1.2 "Assessment" shall mean any annual assessment, special assessment, maintenance assessment or installment thereof, which is levied on Lots by the Association in accordance herewith.
- 1.3 "Association" means the Wilderness Valley Community Association, Inc., a Kansas not-for-profit corporation organized as herein provided.
- 1.4 "Builder" means Developer or any other person or entity that acquires fee title to one or more Lots from Developer for the purpose of constructing residences thereon for resale.
 - 1.5 "City" means the City of Overland Park, Kansas.
- 1.6 "Common Facilities" means all land designated by Developer for the general use, benefit or enjoyment of all owners, tenants and occupants of the Neighborhood which is (a) designated as a tract on any plat of any portion of the Neighborhood, (b) deeded to the Association by or at the direction

of the Developer, or (c) the subject of easements, leases, licenses or other rights of use granted to the Association by or at the direction of the Developer, together with all improvements, fixtures, equipment and other tangible personal property located on, used in connection with or forming a part of any of the foregoing land, including, without limitation: buildings and structures; plantings, irrigation systems and other landscape features; playgrounds, picnic areas, swimming pools and other recreational facilities and equipment; sidewalks, trails and walkways; lighting, signs, monuments, walls, fences and sculptures; and drainage facilities, PROVIDED, HOWEVER, the foregoing does not constitute a representation or warranty that any Common Facility so enumerated will exist within the Neighborhood.

- 1.7 "Declaration" means this Declaration of Wilderness Valley, as it may be amended or supplemented from time to time.
- 1.8 "Developer" shall mean Wilderness South, L.L.C., a Kansas limited liability company, its successors and assigns.
- 1.9 "Lot" means each separate parcel within the Neighborhood, as shown on any recorded plat of all or part of the Neighborhood, which is intended for individual ownership, except any such separate parcel included within the Common Facilities, provided however, that if an Owner, other than the Developer, owns all or parts of one or more adjacent lots upon which only one residence has been, is being, or will be constructed, then such adjacent property under common ownership shall be deemed to constitute only one "Lot".
- 1.10 "Owner" means each person or persons and/or entity or entities who may from time to time own fee simple title to any Lot, including the Developer, but excluding those having such interest merely as security for the performance of an obligation.
- 1.11 "Patio Homes Area" shall mean area(s) to be designated on future plats as may be added from time to time pursuant to Article 13, and consisting of Lots and Common Facilities.
- 1.12 "Plat" means, collectively, all subdivision plats of land within the Neighborhood, as approved by the City and recorded with the Register of Deeds, as the same may be amended from time to time.
 - 1.13 "Register of Deeds" means the Register of Deeds for Johnson County, Kansas.
- 1.14 "Residence" means a building (together with related improvements) which is designated and used exclusively for single-family residential purpose located on any Lot in the Neighborhood.
- 1.15 "Right -of-Way Amenities" means irrigation systems, trees, shrubs, and other plantings and landscape improvements, fixtures and equipment which are located on cul-de-sac islands and public right-of-ways adjacent to Common Facilities.
 - 1.16 "Service Provided Lots" means all lots in the Patio Homes Area.

ARTICLE 2 ASSOCIATION

2.1 **PURPOSE OF ASSOCIATION.** The Association shall protect, maintain, improve, operate and administer the Neighborhood, including Common Facilities and Right-of-Way Amenities, including taking necessary action to levy and collect the assessments herein provided for, pay expenses and losses and do such other things as are provided or contemplated in this Declaration and the Association's Articles of Incorporation and Bylaws. The Association shall not be deemed to be conducting a business of any kind, and shall hold and apply all funds it receives for the benefit of the Neighborhood in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws.

2.2 MEMBERSHIP IN ASSOCIATION.

1. Developer shall be a member of the Association by virtue of Developer's ownership of Lots within the Neighborhood as of the date of recording of this Declaration and any Lots acquired by Developer thereafter. Developer shall have thirty (30) votes in the Association for each Lot

for which Developer holds fee simple title. Each other Owner shall, upon acquisition of fee simple title to any Lot, automatically become a member of the Association. Each Owner shall be entitled to one (1) Association membership and shall have one (1) vote in the Association for each Lot in which the Owner holds the interest required for membership and upon which the member shall not be delinquent in the payment of Assessments. Each Owner shall give notice to the Association of the name and address of the individual who will hold the Association membership for such Owner. If an Owner (other than Developer) is comprised of more than one person and/or entity, they shall designate one of their number to hold the Association membership, and each member (other than Developer) must be (1) an individual who is an Owner, or (2) if the Owner is or includes a partnership, an individual who is a partner, or (3) if the Owner is or includes a corporation, an officer of the corporation, or (4) if the Owner is or includes a trust, an individual who is a trustee or beneficiary of the trust, or (5) if the Owner is or includes a limited liability company or an association, an individual who is a member or manager of the limited liability company or association.

- 2. A membership in the Association shall not be transferred, pledged or alienated in any way by any Owner other than Developer except as expressly provided in this Declaration. Subject to the provisions of this Article 2.2, membership in the Association shall automatically be transferred to the new Owner upon the transfer of fee simple title to the Lot to which the membership appertains, whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Lot; however, the Association shall not be responsible for providing notices to the new member under this Declaration until notice of the transfer and of the name and address of the new member has been given to the Association.
- 3. Notwithstanding the foregoing provisions of Article 2.2, if an Owner has granted an irrevocable proxy or otherwise pledged the voting rights appurtenant to such Owner's membership in the Association to a mortgagee as additional security, the votes of such mortgagee shall be recognized if a copy of the proxy or other instrument pledging such voting right has been provided, the Association shall recognize the rights of the mortgagee under the instrument first provided.
- 4. If any lender to which Developer assigns as security all or substantially all of Developer's rights under this Declaration shall succeed to Developer's interest by virtue of such assignment, the voting rights of Developer as set forth herein shall not be terminated by such assignment, and such lender shall hold Developer's membership and voting rights on the same terms as they were held by Developer.

2.3 INDEMNIFICATION.

- officer and director of the Association, each member of the Design Review Committee (hereinafter defined) and Developer (to the extent a claim may be brought against Developer by reason of its appointment or removal of or control over any such other persons) (each, an "Indemnified Party") against all expenses and liabilities (including attorneys' fees) reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity (or, in the case of Developer, by reason of having appointed, removed or controlled or failed to control any officer or director of the Association or member of the Design Review Committee), provided the Indemnified Party did not act, fail to act or refuse to act willfully, in a grossly negligent manner or with fraudulent or criminal intent in the performance of the Indemnified Party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.
- 2. To the fullest extent permitted by law, neither Developer nor any officer or director of the Association nor any member of the Design Review Committee shall be liable to any Owner or any Association member or anyone claiming by, through or under any Owner or Association member for any damage, loss or prejudice suffered or claimed on account of any decision, course of

action, inaction, omission, error or negligence taken or made in good faith and which Developer, such officer, director or Design Review Committee member reasonably believed to be within the scope of his, her or its duties.

- 2.4 **POWERS AND DUTIES OF THE ASSOCIATION.** The Association shall have the powers and duties set forth in its Articles of Incorporation and Bylaws, provided such powers and duties are not inconsistent with the provisions of this Declaration. In addition to and not in limitation of the powers and duties of the Association provided in its Articles of Incorporation and Bylaws, the Association shall have the following powers and duties:
- 1. **DISCRETIONARY POWERS.** The Association shall have the power, in its discretion, to do any of the following, which it may exercise or perform whenever, in its discretion, it may deem necessary or desirable:
 - (1) Acquire and own title to or acquire by lease such real property as may be reasonably necessary in order to carry out the purposes of the Association.
 - (2) Provide for the design, construction, installation, maintenance, replacement, protection and operation of Right-of Way Amenities and any improvements the Association may deem advisable on any Common Facilities which are intended for the use, benefit or enjoyment of Owners in the Neighborhood.
 - (3) Install, maintain and use, or authorize the installation, maintenance and use of sanitary and storm sewers, storm drains, gas and water pipelines, underground electric, cable television and telephone conduits and related appurtenances, and grant permits, licenses, easements or right-of-ways for such public and private utilities, roadways or other purposes upon, across or under property owned or controlled by the Association as may be reasonably necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Neighborhood or any part thereof or the preservation of the health, safety, convenience and welfare of the Owners.
 - (4) Clean streets, gutters, catch basins, sidewalks, storm sewers, irrigation and drainage facilities, including, without limitation, any such facilities or improvements located within public right-of-ways which serve the Neighborhood.
 - (5) Erect and maintain signs for purposes of identification, traffic control and public safety.
 - (6) Employ duly qualified security officers to provide protection for the Neighborhood or any part thereof.
 - (7) Obtain and maintain property insurance on the Common Facilities against loss or damage by fire, hazard or other casualty; comprehensive liability insurance with respect to the Common Facilities covering all claims for personal injury and/or property damage; and/or adequate fidelity coverage to protect against dishonest acts by officers, directors and employees of the Association and all others who handle or are responsible for handling funds of the Association, all in such forms and amounts and with such insurance companies as the Association may deem appropriate, naming as insureds the Association, the Developer and its agents and employees (so long as Developer owns any land within the Neighborhood or controls the Association), each director of the Association, any management company under any management contract with respect to the Common Facilities and its agents and employees, and any other persons or entities designated by the Association in its discretion.
 - (8) Borrow money in such amounts, at such rates of interest, upon such terms and security and for such periods of time as the Association may deem necessary or appropriate, in its sole discretion.

- (9) Establish reserve accounts for repair and maintenance of Association property, periodically review the adequacy thereof, and maintain such reserve funds in interest-bearing accounts until expended for the benefit of the Association.
- (10) Adopt and enforce reasonable rules and regulations which shall govern the use of the Common Facilities and Lots; preserve or enhance the quality or appearance of the Neighborhood, or the safety, convenience, benefit and enjoyment of the users thereof; or otherwise to promote the interests of Owners, tenants and occupants of land within the Neighborhood; and amend or supplement such rules and regulations at any time and from time to time.
- Obtain an injunction to prevent the breach of, or to enforce the observance of, and/or sue for damages as a result of the violation of, either in its own name or in the name of any Owner, any and all terms, provisions, covenants, conditions, restrictions, licenses and easements imposed upon the land in the Neighborhood by this Declaration, provided that failure to do so at the time of violation shall in no event be deemed to be a waiver of the right to do so thereafter. To the extent permitted by law, the party against whom such enforcement or damages are sought shall pay all costs and expenses (including reasonable attorneys' fees) of the Association with respect to any such action or proceeding, and the Lot owned by such Owner may be subject to a lien for payment. Any such costs and expenses not paid by such party shall be paid out of the general fund of the Association herein provided for. Nothing herein shall be deemed to prevent any Owner having the right to do so from enforcing, in such Owner's own name, any of the terms, provisions, covenants, conditions, restrictions and easements established by this Declaration, nor shall any Owner have any liability for the failure to do so.
- (12) If any vacant or unimproved Lot is not maintained by the Owner thereof, mow, care for, maintain and remove loose material, trash and rubbish from such Lot and do anything else the Association deems necessary or desirable to keep such Lot neat in appearance and in good order.
- (13) Exercise any other powers elsewhere provided to the Association in this Declaration.
- 2. **DUTIES.** The Association shall have the duty to do or cause to be done the

following:

- (1) Levy and collect the assessments and charges provided for in this Declaration.
- (2) Care for, trim, protect, remove and replant trees, shrubbery, flowers, and groundcovers which are part of the Common Facilities and Right-of-Way Amenities, and install and maintain sprinkler systems on portions of the Common Facilities and Right-of-Way Amenities where irrigation is needed.
- (3) Provide lawn care, including mowing, spraying and replanting of grass and sod on all portions of the Patio Homes Area where such care is needed, except that such service shall not include the care of shrubs, trees, gardens or flowers planted by an Owner or the care of areas which have been enclosed by an Owner with fencing or hedging or otherwise made inaccessible to the Association.
 - (4) Provide for the collection and dispose of trash and garbage.
- (5) Plow and remove snow from sidewalks and streets which are part of the Common Facilities and from sidewalks and driveways in the Patio Homes Area.
- (6) Exclusively manage, control, maintain, repair and replace all Common Facilities for the benefit of the Owners, including exercise of control over such easements, leases, licenses, usage rights and other rights and property as the Association may acquire from time to time.

- (7) Pay all taxes and assessments levied or assessed against the Common Facilities and any other property owned or leased by the Association.
- (8) Keep true and correct records of account in accordance with generally accepted accounting principles, and have available for inspection by any Owner, at reasonable times during regular business hours, books which specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.
- (9) Upon reasonable request and during reasonable business hours, make available for inspection by any Owner or Association member of the books, records and financial statements of the Association, together with current copies, as amended from time to time, of this Declaration, the Articles of Incorporation and Bylaws of the Association and the Design Standards (hereinafter defined).
- (10) Perform any other duties required of the Association as provided elsewhere in this Declaration.
- 2.6 MANAGING AGENT; CONTRACTS AND SERVICES. Any powers, rights and duties of the Association may be delegated to a managing agent under a management contract; provided that no such delegation shall relieve the Association from its obligations to perform any such delegated duty. Any contract entered into by the Association for professional management or other services shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive oneyear periods, and any such contract shall permit termination by either party upon thirty (30) days' notice with or without cause and without payment of any termination fee. Subject to the foregoing limitations, the Association is specifically authorized to enter into a management contract with a management company owned in whole or in part by Developer or any affiliate of Developer; provided that the term of such contract shall not extend beyond the Turnover Date (hereinafter defined). The Association shall also have the right, in its discretion, to enter into such contracts and transactions with others, including Developer and its affiliates, as the Association may deem necessary or desirable for the purposes herein set forth, and shall have the right to engage and dismiss such agents and employees as will enable the Association to adequately and properly carry out the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws. No such contract or transaction shall be invalidated or in any way affected by the fact that one or more directors of the Association may be employed by or otherwise associated with Developer or its affiliates, provided the fact of such interest is disclosed or known to the other directors acting upon such contract or transaction, and provided further that the contract or transaction is on commercially reasonable terms. Any such interested director may be counted in determining the existence of a quorum at the meeting of the Association's Board of Directors at which such contract or transaction is authorized, and such interested director may vote thereon with the same force and effect as if he were not interested.
- 2.7 ACCEPTANCE OF EASEMENTS, ETC. The Association shall accept all easements, leases, licenses and other usage rights and title to all property and improvements that may be granted, conveyed or assigned to the Association by or at the direction of Developer in Developer's sole discretion.
- 2.8 CONTROL OF ASSOCIATION BY DEVELOPER. Notwithstanding anything in this Declaration to the contrary, Developer shall have and maintain absolute and exclusive control of the Association and the Design Review Committee until the date (the "Turnover Date") which is the earlier of (a) the first day of the next fiscal year of the Association following that date on which Developer no longer has majority voting control of the Association, or (b) the effective date designated by Developer in

a notice to the members of the Association stating that Developer relinquishes control. Until the Turnover Date, (a) Developer will be entitled to cast controlling votes with respect to the election and removal of all officers and directors of the Association and members of the Design Review Committee and with respect to any other matter requiring the vote or approval of members of the Association or the Design Review Committee as set forth herein or in the Association's Articles of Incorporation or Bylaws, (b) Developer shall perform the duties, assume the obligations, levy and collect Assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were hereby given directly to the Developer, and (c) the Developer may, by appropriate agreement made expressly for that purpose, assign or convey to the Association any or all of the rights, reservations and privileges herein provided, and upon such assignment or conveyance being made, the Association shall exercise and assume such rights. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of Developer and its written relinquishment of such rights. Until the Turnover Date, Developer may, at its discretion, make cash advances to the Association to meet its net operating cash requirements. The Developer may also, at its discretion, require that such advances be considered borrowings of the Association and further require the Association to evidence such borrowings by executing promissory notes, bearing interest at a rate satisfactory to Developer.

ARTICLE 3 ASSESSMENTS

- Assessable Lot, by acceptance of the deed or other conveyance thereof or interest therein, is deemed to covenant and agree to pay all Assessments provided for in this Declaration. Each Assessment, together with interest thereon as hereinafter provided, filing fees, attorneys' fees, court costs and other costs of collection thereof (such interest and all of such fees and costs being herein sometimes collectively called "Costs") shall be a continuing lien upon the Assessable Lot against which such Assessment is made, which lien shall be enforceable as provided in Article 3.9. Each Assessment, together with Costs relating thereto, shall also be the personal obligation of the Owner of the Assessable Lot against which the Assessment is made. Such personal obligation shall not pass to an Owner's successor unless expressly assumed by the successor. If an Owner consists of more than one person and/or entity, the obligations of the Owner for the payment of such Assessments and Costs shall be joint and several.
- PURPOSE OF ASSESSMENTS. The Assessments levied by the Association shall be used to provide funds to enable the Association to exercise the powers and perform the duties herein set forth, including (by way of example only and not by way of limitation) (a) the costs of construction. installation, maintenance, management, operation, repair and replacement of the Common Facilities and Right-of-Way Amenities; (b) the costs of management and administration of the Association, such as compensation paid by the Association to managers, accountants, attorneys, other professionals and employees; (c) the costs of utilities (including water, electricity, gas, sewer and trash removal services provided directly to the Association and not individually metered or billed by the service providers directly to the Lots) and other services provided by the Association which generally benefit and enhance the value and desirability of the Neighborhood; (d) the costs of any insurance maintained by the Association; (e) reasonable reserves for major items, contingencies, replacements and other proper purposes as deemed appropriate by the Association; (f) the costs of bonding any persons handling funds of the Association; (g) taxes, assessments and other governmental impositions paid by the Association; and (h) the costs of any other items or services to be provided or performed by the Association as set forth in this Declaration or in the Association's Articles of Incorporation or Bylaws, or in furtherance of the purposes of the Association.

3.3 **METHOD OF ALLOCATION.** The total amount of each annual Assessment and each special Assessment levied by the Association shall be divided equally among all of the Assessable Lots included within the Neighborhood at the time such Assessment is levied. Each Assessable Lot shall be subject to assessment in accordance with the method provided above, regardless of whether any two or more Assessable Lots have been combined into a single Lot as permitted by Article 1.9 hereof (except that the Assessments for such single Lot shall include only one charge for trash removal).

3.4 ANNUAL ASSESSMENTS.

- levied by the Association from year to year and shall be paid to the Association annually in advance by the Owner of such Assessable Lot. If the amount collected from annual Assessments for any year exceeds the Association's costs and expenses for such year, such excess shall be taken into consideration in preparing the budget and determining the annual Assessment to be levied for the following year. If the amount collected from annual Assessments for any year is inadequate to meet the Association's actual or projected costs and expenses for such year, special Assessments may be levied at any one or more times during such year as provided in Article 3.5. A portion of the annual Assessments for each year may be allocated to reserves to provide required funds for repair or replacement of major items and for other contingencies and proper purposes. The responsibility of the Association shall be only to provide for such reserves as the Association in good faith deems reasonable, and neither the Developer nor the Association shall have any liability to any Owner or member of the Association if such reserves are inadequate.
- 2. Until further action by the Board, the initial annual Assessment for each Assessable Lot for the year 2000 shall be Five Hundred and No/100 Dollars (\$500.00). Notwithstanding anything herein to the contrary, the annual Assessment upon each Lot shall not be increased by action of the Developer or the Board by an amount exceeding fifty percent (50%) of the preceding year's annual Assessment, unless such increase is authorized by fifty percent (50%) of the votes of Owners in the Neighborhood, exclusive of the Developer.
- 3. The first annual Assessment with respect to each Assessable Lot shall be due as of the earlier of (1) the date fee simple title to such Assessable Lot is transferred from a Builder to a subsequent purchaser, or (2) the date which is eighteen (18) months after the recording of the deed whereby Developer conveys title to the Assessable Lot to a Builder or to another Owner (provided that if on said date the Builder still holds title to such Assessable Lot, the Assessments against such Assessable Lot-shall not include any charge for trash removal service unless such service is requested). Such first annual Assessment shall be prorated on a per diem basis in accordance with the number of days remaining in such year from and after the date the Assessment is due. The annual Assessment with respect to each Assessable Lot for each subsequent year shall be due as of June first of such year.
- 4. Failure of the Association to levy an annual Assessment prior to June first of any year shall not invalidate any such Assessment subsequently levied for that particular year, nor shall failure of the Association to levy an annual Assessment for any one year in no way affect the right of the Association to do so for any subsequent year.

3.5 SPECIAL ASSESSMENTS.

1. The Association may at any time or times during any year, if necessary in its discretion to enable the Association to carry out the purposes herein set forth, levy against each Assessable Lot (from and after the date on which such Assessable Lot first becomes subject to annual Assessments as provided in Article 3.4) a special Assessment over and above the annual Assessment for such year authorized by Article 3.4.

- 2. Special Assessments may be levied by the Association only if fifty percent (50%) of the votes cast by Owners other than the Developer, and all votes cast by the Developer shall be in favor of such special Assessments.
- 3.6 **MAINTENANCE ASSESSMENTS.** The Association may levy against each Assessable Lot in the Patio Homes Area a Maintenance Assessment at the time and in the manner described in Article 9.3.
- 3.7 **NOTICE.** The Association shall give at least thirty (30) days' advance notice to each Owner of an Assessable Lot whose address is then listed with the Association of the amount of any Assessment for such Assessable Lot and the date on which such Assessment is due.
- 3.8 **NO WAIVER OF OFFSET.** No Owner of an Assessable Lot shall be exempt from payment of the Assessments and Costs imposed under this Declaration by waiver of the use or enjoyment of the Common Facilities or Right-of-Way Amenities or by nonuse thereof or by abandonment of such Owner's Assessable Lot. All Assessments shall be payable in the amounts specified in the notices thereof given by the Association, and there shall be no offsets against such amounts for any reason.

3.9 **DELINQUENCY; ENFORCEMENT OF LIENS.**

- 1. If any Owner of an Assessable Lot fails to pay any Assessment on or before the 30th day following the date on which such Assessment is due, then such Assessment shall bear interest from the due date until paid at the highest rate allowable under Kansas law.
- 2. Each Assessment shall become delinquent on the 30th day after the date on which such Assessment is due, and payment of the Assessment and Costs (including interest) may then be enforced as a lien on such Assessable Lot in proceedings in any court in Johnson County, Kansas having jurisdiction of suits for the enforcement of such liens. The Association may, whenever any Assessment is delinquent, file a certificate of nonpayment of Assessments with the Register of Deeds, and for each certificate so filed, the Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$100.00 plus the costs of recording such certificate, which fee shall be part of the Costs included in the lien.
- 3. Such liens shall continue for the maximum amount allowed by law, and no longer, unless, within such time, suit shall have been instituted for the collection of the Assessment, in which case the lien shall continue until the termination of the suit or until the sale of the Lot under execution of the judgment therein.
- 4. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, the benefit of any redemption, homestead or exemption laws of the State of Kansas now or hereafter in effect.
- 5. Any lien which arises against any Assessable Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded first mortgage on such Assessable Lot acquired in good faith and for value securing the payment of a loan made by a bank, savings and loan association or other institutional lender ("First Mortgage"), except for any unpaid Assessments and Costs which accrue from and after the date on which the holder of such First Mortgage ("First Mortgagee") (1) comes into possession of the Assessable Lot, or (2) acquires title to the Assessable Lot, whichever occurs first. If any lien for any unpaid Assessments and Costs which accrued prior to the date a First Mortgagee comes into possession of or acquires title to the Assessable Lot has not been extinguished by the process whereby the First Mortgagee came into possession or acquired title, the First Mortgagee shall not be liable for such unpaid Assessments or Costs arising or accruing prior to such date and, upon request by the First Mortgagee to the Association, the Association shall release such lien of record; provided, however, that (1) any unpaid Assessments and Costs which are so extinguished shall continue to be the personal obligation of the delinquent Owner, and

the Association may seek to collect them from such Owner even after such Owner is no longer the Owner of the Lot or a member of the Association; and (2) if the Owner against whom the original Assessment was made is the purchaser of or redeems the Assessable Lot, the lien shall continue in effect and may be enforced for the Assessments and Costs which were due prior to the final conclusion of any such foreclosure or equivalent proceeding. Any such unpaid Assessments and Costs which are not collected within a reasonable time may be reallocated by the Association among all other Owners of Assessable Lots, irrespective of whether collection proceedings have been commenced or are then pending against the defaulting Owner.

- 3.10 **CERTIFICATE OF NONPAYMENT.** Upon request, any party acquiring title to or any interest in an Assessable Lot shall be entitled to a certificate from the Association setting forth the amount due for unpaid Assessments and Costs pertaining to such Assessable Lots, if any, and such party shall not be liable for, nor shall any lien attach to the Assessable Lot in excess of, the amount set forth in the certificate, except for Assessments and Costs which arise or accrue after the date of the certificate.
- 3.11 **PLEDGE OF ASSESSMENT RIGHTS AS SECURITY.** The Association may pledge the right to exercise its assessment powers as security for any obligation of the Association; provided, however, that after the Turnover Date any such pledge shall require the prior affirmative vote of a majority of all members of the Association.

ARTICLE 4 EASEMENTS AND LICENSES

4.1 RESERVATION BY DEVELOPER; GRANT TO ASSOCIATION

- 1. Developer hereby reserves to itself and its successors and assigns, and grants to the Association, the right, privilege and easement to enter upon the Common Facilities and Lots to the extent necessary for the purposes of (a) constructing, maintaining, relocating, repairing and replacing improvements on the Common Facilities and Right-of-Way Amenities which the Developer or the Association reasonably believes will enhance the beauty and function of the Common Facilities, Right-of-Way Amenities or the Neighborhood; (b) planting, replanting, maintaining and replacing grass and landscaping on the Common Facilities; and (c) doing all other things which the Developer or the Association shall be obligated to do as set forth in this Declaration or shall deem desirable for the neat and attractive appearance and beautification of the Common Facilities and Right-of-Way Amenities.
- 2. The foregoing rights, privileges and easements of Developer shall automatically terminate as of the Turnover Date; provided, however, that Developer may at any time and from time to time relinquish any or all of the foregoing rights, privileges or easements by recording an instrument to such effect with the Register of Deeds. The foregoing rights, privileges and easements of the Association shall be perpetual and shall survive termination of this Declaration. The rights granted to the Association herein shall not be affected or impaired by the Association's failure to be formed as of the date of the filing of this Declaration, but said rights shall pass upon the date of such formation.

4.2 GRANT TO OWNERS.

1, Developer hereby grants to each Owner the non-exclusive, perpetual right, privilege and easement to use and enjoy the Common Facilities for the respective purposes for which the Common Facilities are constructed, designed and intended, subject, however, to all of the provisions of this Declaration, the provisions of the Association's Articles of Incorporation

and Bylaws and any reasonable rules and regulations of general application within the Neighborhood which the Association may adopt from time to time, which right, privilege and easement shall be appurtenant to and shall automatically pass with the title to each Lot and shall survive the termination of this Declaration.

- 2. The Developer covenants and agrees to convey title to or its interest in the Common Facilities (except any part thereof that is within any Lot or outside of the Neighborhood) to the Association, without any cost to the Association, not later than one month after the Turnover Date.
- 4.3 **LICENSE TO ENTER.** During the term of this Declaration and thereafter as long as any of the easements created by this Declaration survive, the Developer, the Association and their respective members, partners, officers, employees, agents and contractors shall have a temporary license to enter upon and use such portions of any Lot as may be reasonably necessary to permit the Developer or the Association to exercise or perform all or any of the rights, powers and obligations reserved, given to or imposed upon the Developer or the Association by the provisions of this Declaration; provided, however, that the Developer's rights under this Article 4.3 shall automatically terminate as of the Turnover Date.
- 4.4 **PERFORMANCE OF WORK; INDEMNIFICATION.** The Developer and the Association, in entering upon any Lot in the exercise of the rights, privileges and easements granted to them by this Article 4, shall (a) perform all work with due diligence; (b) take all safety measures reasonably required to protect persons and property; (c) perform the work so as to avoid, to the extent practical, interference with the use or quiet enjoyment of the Lot; (d) after the work is completed, restore the Lot to the condition existing prior to the work (to the extent consistent with the performance of such work); and (e) indemnify and hold harmless the Owner of the Lot from and against all claims for bodily injury or property damage which may be asserted against such Owner by reason of the exercise of rights by the Developer or the Association under this Article 4.

ARTICLE 5 **OWNERS' INSURANCE; DAMAGE TO IMPROVEMENTS**

- 5.1 **OWNERS' INSURANCE.** Each Owner shall obtain and maintain property insurance insuring all improvements on such Owner's Lot against loss by fire and such other perils as are covered by a standard fire insurance policy with a so-called "extended coverage" endorsement, and such personal liability and other insurance as such Owner desires, the premiums for which shall be paid by such Owner.
- destroyed by casualty or other cause, such improvements shall be repaired and restored with due diligence and any insurance proceeds shall be applied to restoration or repair; provided, however, that the Owner may elect not to restore or repair if (a) the improvements are subject to a First Mortgage and the First Mortgage requires, because restoration or repair is not economically feasible or because the security of the First Mortgage is threatened, that insurance proceeds be applied to sums secured by the First Mortgage; or (b) the Association consents to Owner's election not to restore or repair. Should an Owner elect not to restore or repair as permitted by the preceding sentence, the Owner shall at its sole expense demolish the damaged improvements (including foundations), clear away all debris and take all other action (including filling to grade, sodding and landscaping) required so that the area formerly occupied by the demolished improvements shall be neat and attractive in appearance and compatible with a high quality residential development.

ARTICLE 6 ADDITIONAL COVERAGE

- 6.1 **MAINTENANCE BY OWNERS.** Except as otherwise expressly provided in this Declaration, each Owner, at such Owner's expense shall provide and be responsible for all maintenance, repairs, replacements and approved construction on such Owner's Lot.
- 6.2 TAXES AND OTHER ENCUMBRANCES. Each Owner shall promptly pay, before delinquency, all taxes, assessments, liens, encumbrances or charges of every kind levied against or imposed upon such Owner or such Owner's Lot which may, as a matter of law, be or become a lien on any part of the Common Facilities which lien is prior to the easements granted and reserved in this Declaration. In the event of a breach of this covenant, the Association shall have, in addition to all other rights or remedies, the right (but not the obligation) to obtain the discharge of any such lien by payment or otherwise, and collect from such Owner all costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

ARTICLE 7 **DESIGN CONTROL**

7.1 **DESIGN REVIEW COMMITTEE.** The Association shall have a Design Review Committee consisting of three persons appointed (and removed) from time to time (a) by Developer in its sole discretion (with no requirement of Lot ownership or other criteria) until the Turnover Date (as defined in Article 2.8), and (b) by the Board of Directors of the Association after the Turnover Date.

7.2 APPROVAL OF IMPROVEMENTS, ALTERATIONS AND REPLACEMENTS.

- 1. No building or other structure; fence or wall; driveway, walkway, patio or deck; exterior lighting, sign, apparatus or fixture; swimming pool or other recreational facility or equipment; landscaping or alteration of grade or drainage; or changes, alterations or additions to the exterior portions of any of the foregoing (including color changes), either temporary or permanent (collectively referred to as "Improvements"), shall be constructed, erected, installed, placed, undertaken or maintained in or upon any part of the Neighborhood except in compliance with plans and specification thereof which have been submitted to and prior approved in writing by the Design Review Committee.
- 2. Replacements of any exterior portions of any Improvements because of age, deterioration, casualty loss or other reason, shall be of the same design, material and color as the original Improvement unless plans and specifications thereof have been submitted to and prior approved in writing by the Design Review Committee.
- 3. Until the Turnover Date, any and all Improvements or replacements constructed, erected, installed, placed, undertaken or maintained by the Developer shall be deemed approved by the Design Review Committee.
- 7.3 **DESIGN STANDARDS.** In order to achieve uniformity and coordination within the Neighborhood and carry out the purposes of the Design Review Committee, design standards ("**Design Standards**") shall be established by the Design Review Committee. The Design Standards may, from time to time, be amended, supplemented or repealed by the Design Review Committee upon unanimous vote. Initially, all Improvements within the Neighborhood shall conform to the Design Standards set forth in Exhibit A attached hereto and incorporated herein by reference.
- 7.4 **DESIGN CONSIDERATIONS.** In connection with the approval or disapproval of plans and specifications, the Design Review Committee shall consider appearance; quality of design and

workmanship; harmony of design, materials and colors in relation to surrounding structures and landscape and the Neighborhood as a whole; and location and finished grade elevations with respect to surrounding topography. The Design Review Committee may reject plans and specifications, without citing specifics, for the following reasons, among others: (1) insufficient information to adequately evaluate the design or its intent; (2) poor overall design quality; (3) incompatible design elements; (4) inappropriate design concept or design treatment; or (5) a design found to have an adverse effect on the character of the Neighborhood or its residents. In recognition of the fact that the overall impact of Improvements involves issues of taste and judgment which cannot be completely reduced to Design Standards, the Design Review Committee shall also have the right, in its sole discretion, to reject plans and specifications conforming to the Design Standards if the Design Review Committee believes that the overall aesthetic impact of any proposed Improvement, addition, alteration or change is detrimental to the Neighborhood

- 7.5 **REVIEW PROCESS.** All submissions to the Design Review Committee are to be made within the time periods to be established from time to time by the Design Review Committee. The initial review of each such submission by the Design Review Committee will be carried out within twenty (20) working days from the date of each submission, and notification of recommendations, approval or disapproval will be provided in writing to the Owner within that time. Submission to the City for building permits or site plan approval should not be made until final plans have been approved by the Design Review Committee.
- 7.6 CONSTRUCTION PERIOD REQUIREMENTS. During construction periods on any Lot, the Owner and all parties involved in such construction shall be responsible for maintaining the Lot in a clean and orderly manner; for controlling erosion and runoff while the site is in a disturbed condition; and for insuring that mud and debris tracked onto pubic streets is promptly removed. Adequate procedures shall be followed, including use of barricades, temporary construction fence, straw bales or silt fence, to protect trees and other natural vegetation which may exist on adjacent Lots, Common Facilities and adjacent property.
- 7.7 **PLANS AND SPECIFICATIONS**. Building plans and specifications shall include the following:
- 1. A site plan which shows the location of the Residence on the Lot; the location of driveways, walkways, patios, decks, walls, fences, and other structures; the top of foundation elevations; the existing grades and the proposed final grading of the Lot; and the size and location of all large trees with trunks which are six inches or larger in diameter (measured six inches above ground level) located within 25 feet of the Residence or on other parts of the Lot which will be disturbed by construction. The survey shall clearly indicate which large trees will be saved and which shall be removed.
- 2. A complete set of final construction plans which include floor plans; exterior elevations for all sides showing finish grades; roof plans; and material selections. Floor plans and front elevations shall be drawn at a scale of $\frac{1}{4}$ " = 1". Side and rear elevations and roof plan may be drawn at $\frac{1}{4}$ " = 1' or $\frac{1}{8}$ " = 1'.
- 3. A final color plan with color chips for all exterior surfaces including roofs, walls, shutters, trim and flatwork (if other than untinted concrete).
 - 4. A final landscape plan.

Two sets of all plans and specifications shall be submitted to the Design Review Committee for review. Once approved, one set shall be signed and returned and one set shall be kept by the Design Review Committee for record.

7.8 **INTERPRETATION**; **WAIVER**. The Design Review Committee's interests in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. In order to meet special situations that may not be foreseen, it may be desirable

from time to time for the Design Review Committee to allow variances of certain requirements. Any variance granted is considered not to be precedent setting because the decision is being made in the context of the specific project in question with the welfare of the appropriate area and overall Neighborhood in mind. All approvals and consents of the Design Review Committee shall be in writing, and oral approvals or consents shall be of no force or effect.

7.9 DESIGN REVIEW COMMITTEE AUTHORITY AND LIMITS OF LIABILITY.

- 1. The Design Review Committee may delegate the plan review responsibilities to one or more of its members or to architectural consultants it retains. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.
- 2. The Design Review Committee shall have the right, at its discretion, to collect fees from applicants to reimburse the Association for direct expenses incurred in reviewing such plans and specifications. Such expenses may include the cost of services rendered by professional architects, landscape architects or engineers, and associated costs of postage, photocopies, etc.
- 3. By its approval of plans and specifications, the Design Review Committee shall not be deemed to have approved the same for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Developer nor any member thereof, the Design Review Committee nor any member thereof, nor the Association nor any member, officer or director thereof, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. None of said persons or entities shall be liable to any Owner or other person or entity for any damage, loss, cost or prejudice suffered or claimed on account of (1) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (3) the development or manner of development of any property within the Neighborhood. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be a representation or warranty that said plans or specifications comply with applicable governmental ordinance or regulations, including zoning ordinances and building codes.
- Any member or authorized consultant of the Design Review Committee, Developer or its representatives, or any authorized officer, director, employee or agent of the Association may at any reasonable time, after reasonable notice to the Owner, enter upon any Lot without being deemed guilty of trespass in order to inspect Improvements constructed or being constructed on such Lot to ascertain that such Improvements have been or are being built in compliance with the plans and specifications approved by the Design Review Committee, the Design Standards and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed 60 days) after a request therefor from any Owner as to his Lot, which request shall contain an affirmative statement by such Owner of his good faith belief that he is in compliance with the approved plans and specifications, the Design Standards and the provisions hereof. If such inspection reveals that the Improvements located on such Lot have been completed in compliance with the requirements of the Design Review Committee, the Design Standards and the provisions hereof, the Design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when recorded with the Register of Deeds, shall be conclusive evidence of compliance with the requirements of the Design Review Committee, the Design Standards and the provisions hereof as to the Improvements described in such recorded notice.
- 5. The Association may promulgate such rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration in order to enforce compliance with the Design Standards. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE ASSOCIATION MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN ANY REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR TO COMPLY WITH ANY SUCH APPROVAL.

7.10 PUBLIC APPROVALS. All pertinent requirements of public agencies shall be complied with in the development of each Lot, and all plans must be approved by the appropriate departments of the City. Without limiting the foregoing, the design of any fence crossing a drainage area must be reviewed and approved by the Director of Public Works of the City to assure that the fence does not restrict water flow. Each Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and Neighborhood regulations, the Design Standards may be more restrictive as to land use restrictions, site development standards, landscape requirements or other matters. In every case in which the Design Standards or approvals given by the Design Review Committee are at variance with public agency requirements, the more restrictive standards, approvals, or regulations shall govern. Final legal approvals permitting development and occupancy of each Lot and Residence will be made by the City.

ARTICLE 8 USE AND OCCUPANCY RESTRICTIONS

- 8.1. Lots and Owners shall be subject to the following use and occupancy restrictions:
- 1. Residential Use. Each Lot may be improved, used or occupied only for one single-family private Residence and for no other use or purpose. No trailer, garage, outbuilding or any structure of a temporary character shall at any time be used for human habitation, temporarily or permanently. Except as otherwise provided herein, no building or structure of any sort shall be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his Residence. Maintaining such a home office shall not result in the violation of these restrictions or permit advertising said office location (on or off site) or visitation by customers or clients at the Residence. Use of any Lot for commercial day care (child or adult) purposes is specifically prohibited. Nothing herein shall restrict the Developer or others authorized by the Developer from erecting and using temporary buildings or any Residence for office, model, sales or storage purposes during the period of construction of Improvements and sale of Lots within the Neighborhood.
- 2. Leasing. No residence or Lot or any portion thereof may be leased for a period of less than six months. All leases shall be in writing and shall provide that the lease be subject to the terms of these Restrictions and the rules and regulations of the Association, and shall also provide that any failure by the lessee to comply with such terms shall be default under the lease. The Owner of the leased property shall be responsible for compliance by the lessee with these Restrictions and the rules and regulations of the Association.
- 3. **Maintenance.** Each Owner shall properly maintain his Lot and the Improvements thereon in good repair and in a clean, orderly and attractive condition. Trees, shrubs and lawns shall be maintained in good condition and attractive appearance. Lawn grass shall not be permitted to reach a height of more than six inches.
- 4. Utility and Drainage Easements. Within the easements reserved in the Neighborhood for the installation and maintenance of utilities and drainage facilities, no grading, planting, structure or other material shall be placed or maintained which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels. Easement areas on Lots, and all Improvements thereon, shall be maintained continuously by the Lot Owners, except for those improvements for which a public authority or utility company is responsible.
- 5. Alteration of Common Facilities and Right-of-Way Amenities. No Owner shall improve, destroy or otherwise alter any Common Facilities or Right-of-Way Amenities without prior written consent of the Association.

- 6. Flagpoles, Mailboxes, Doghouses, Yard Ornaments, Lawn Furniture, Play Equipment. No freestanding flagpole, mailbox, doghouse, sculpture, fountain or other yard ornament, permanent lawn furniture or play equipment may be installed, placed or maintained on the exterior of any building or on any Lot without the prior written approval of the Design Review Committee. (Outdoor furniture placed on decks or patios is exempt from approval requirements.)
- 7. **Tennis Courts, Swimming Pools and Hot Tubs.** No tennis court or above-ground swimming pool shall be installed or maintained on any Lot, provided, however, that above-ground hot tubs may be installed and maintained with adequate screening and prior written approval by the Design Review Committee. No in-ground swimming pool or related improvements, facilities or equipment shall be installed or maintained upon any Lot unless the location, design, materials and colors are approved in writing by the Design Review Committee.
- 8. Signs. No permanent or temporary sign of any kind shall be displayed to public view in any manner in the Neighborhood without the prior approval of the Association, except: (i) one sign for each Lot, not exceeding 100 square inches in area, upon which is exhibited the street number for the Lot or the name of the Lot Owner, or both; (ii) one sign for each Lot, not exceeding 1,000 square inches in area, advertising the Lot for sale or lease; (iii) street markers, traffic signs an other signs displayed by government agencies or utilities on designated easements and rights-of-way; (iv) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; and (v) signs not exceeding five square feet in area promoting political candidates or campaigns but only 15 days before and two days after the day of election. Nothing in this section shall be construed to prohibit the erection of Neighborhood entrance structures, identity signs, directional signs, advertising signs and informational signs by Developer, its grantees, assignees, or licensees in such size and design and at such places as it or they may determine. If any sign other than those described above shall be displayed in the Neighborhood, the representatives or agents of the Developer or the Association shall have the right to remove such sign. For purposes hereof, a "sign" includes any mark, symbol, word or drawing intended to communicate to a viewer.
- 9. **Basketball Goals.** No exterior basketball goals shall be erected or maintained on any Lot without the prior written consent of the Design Review Committee. Basketball goals shall have transparent backboards and black, freestanding posts, and shall be erected only behind the front building line on any Lot. Basketball hoops and goals attached to a building are specifically prohibited.
- 10. **Animals.** No animal of any kind, including livestock, poultry and poisonous reptiles, shall be kept on any Lot, except that dogs, cats and other commonly accepted household pets of a number and type permitted by ordinances and regulations of the City, as the same may be amended from time to time, excluding, however, any dog included within the definition of "vicious dogs" pursuant to City ordinances and regulations, may be kept, provided they are not kept or bred for any commercial purpose and do not constitute a nuisance to residents of the Neighborhood. In no event, however, shall more than three dogs or cats, or combination thereof, be kept on any Lot. All permitted pets shall be kept within a Residence or fenced area, or on a leash attended by a responsible person at all times. In the event an otherwise permitted animal, in the discretion of the Association, constitutes a nuisance or endangers the safety or welfare of any resident of the Neighborhood, such animal shall be removed from the Neighborhood by the owner thereof. In the event the owner fails or refuses to remove the animal, the Association may cause the animal to be removed.
- 11. Offensive Activities, Nuisances, Dumping. No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any trash, ashes, brush, debris or other refuse be thrown, placed or dumped upon any Lot or Common Facilities, nor shall anything be done which may be or become an annoyance or a nuisance to residents of the Neighborhood.
- 12. **Trash Storage.** No trash, garbage, or debris of any kind shall be kept on any Lot in such manner as to be visible from neighboring property except when placed outside for the purpose of being picked up and removed in accordance with the trash pick-up service.
- 13. **Solar Collectors.** No solar collector of any kind or type shall be erected or maintained upon any Lot without the prior written consent of the Design Review Committee.

- 14. Antennas, Satellite Dishes. No exterior radio, television, short wave or other antenna of any kind, including satellite dishes or other devices for the reception or transmission of radio, microwave or similar signals, shall be placed or maintained on any Lot without the prior written approval of the Design Review Committee. Approval of such devices shall be based on criteria such as location, size, signal strength, overall appearance, cover and other legally permissible considerations. All such devices shall be installed in accordance with and shall comply in all respects with City requirements.
- 15. Garage Sales. No garage sales, sample sales or similar sales shall be held within the Neighborhood without the prior written consent of the Association.
- 16. **Sound Devices.** No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon any Lot.
 - 17. Utility Lines. All residential utility transmission lines shall be underground.
- 18. Connections to Sanitary and Storm Sewers. No water from any roof or downspout, basement or garage drain or any surface drainage shall be placed in or connected to any sanitary sewer line; nor shall any connection of any kind be made to a storm sewer line.
- 19. **Above-Ground Tanks.** No tank for the storage of fuel or other liquids shall be installed, placed or maintained above the surface of the ground on any Lot.
- 20. Vehicles and Equipment. Except for temporary maintenance vehicles and construction equipment, no automobile, truck, motorcycle, motorbike, van, bus, motor home, recreational vehicle, camper, boat, trailer or other vehicle, and no lawn mower or other motorized or wheeled outdoor equipment or apparatus shall be left, maintained, repaired, serviced or stored on any Lot, except in an enclosed building. Nothing in this section, however, shall be so construed as to prohibit the regular parking of not more than two operative automobiles of any type (including pick-up trucks) in a reasonable state of repair and preservation on any permitted driveway on any Lot. No automobile, including motor homes and recreational vehicles, or any trailer of any type shall be parked or stored upon any street adjoining any Lot for a period exceeding forty-eight (48) hours.
- 21. Garage Doors. All garage doors shall remain closed at all times except when necessary for entry or exit.
- 22. Clotheslines. No exterior clothesline or clothesline pole shall be erected or maintained on any Lot.
- 23. **Holiday Decorations.** No exterior Christmas lights and/or holiday decorations shall be installed, placed or maintained on any Lot except during a sixty (60) day period beginning November 15th of each calendar year.
- 24. Banners, Awnings, Artificial Plants, Equipment, Fixtures. No banner, awning or canopy, artificial plants, or any unsightly equipment or fixture shall be installed, placed or maintained on the exterior of any structure or on any Lot, nor shall any air conditioning equipment be attached to or placed in front of any Residence without the prior written consent of the Design Review Committee.
- 8.2 **COMPLIANCE WITH CITY REQUIREMENTS.** Notwithstanding any provision of this Declaration to the contrary, all property within the Neighborhood shall be used only in compliance with City requirements. In every case in which any provision of this Declaration is at variance with City requirements, the more restrictive provision shall govern and control.
- 8.3 **ENFORCEMENT.** The Association or its authorized agents may enter any Lot on which a violation of these Restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed by the rules and regulations adopted by the Association, shall be deemed a special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article 3.9. All remedies described in Article 15 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, tenant, occupant or other party of any provision of this Article 8.

ARTICLE 9 SERVICE PROVIDED LOTS

- 9.1 SNOW REMOVAL, LAWN CARE. Subject to the terms set forth in Article 9.3 below, the Association shall (i) remove accumulated snow from driveways on the Service Provided Lots and from sidewalks on the Service Provided Lots adjoining the streets and connecting the driveways to the Residence from doors, and (ii) provide lawn care to the Service Provided Lots. Lawn care shall include mowing, fertilizing, and spraying grass on the Service Provided Lots. Lawn care shall not include irrigation, or the care of landscaping, shrubs, gardens or flowers located on the Service Provided Lots. Pruning and spraying of trees on the Service Provided Lots will be provided on an as-needed basis, which shall be determined by the Association.
- 9.2 **EXTENT OF SERVICES.** The scope, necessity, frequency, manner and quality of lawn care and snow removal services provided to the Service Provided Lots shall be determined by the Association. The Association is hereby empowered to directly or indirectly provide lawn care and snow removal services described herein, and to select any and all persons or companies the Association deems necessary or appropriate to provide such lawn care and snow removal services.
- 9.3 MAINTENANCE ASSESSMENTS. Each Owner of a Service Provided Lot (other than Developer) shall pay a "Maintenance Assessment" in addition to the Assessments described in Article 3 of the Declaration. The amount of the Maintenance Assessment shall be established by the Association and shall be based upon bids from third-party service providers for services to the Service Provided Lots, historical expenditures for lawn care and snow removal services, and such other information deemed appropriate by the Association. The Maintenance Assessments shall be established on an annual basis on or before June 1st of each year. The Maintenance Assessments shall be paid in twelve (12) monthly installments on the first day of each month commencing on the first day of the month following the conveyance of the Service Provided Lot with a completed Residence from the Builder to the subsequent purchaser, and may be adjusted monthly to reflect the total number of Service Provided Lots owned by Owners other than Developer.
- 9.4 **FAILURE TO LEVY MAINTENANCE ASSESSMENTS.** Failure of the Association to levy a Maintenance Assessment prior to June 1st of each year for the next succeeding fiscal year beginning on June 1st shall not invalidate any such Maintenance Assessment made for that particular year; nor shall failure to levy a Maintenance Assessment for any one year affect the right of the Association to do so for any subsequent year. When the Maintenance Assessment is made subsequent to June 1st of any year, then it shall become due and payable not later than thirty (30) days from the date of levying the Maintenance Assessment.
- 9.5 **BLANKET EASEMENT.** This Declaration hereby establishes a blanket easement over the Service Provided Lots in favor of the Developer, the Association, their agents, representatives, employees, and contractors for the purpose of entering the Service Provided Lots to provide the snow removal and lawn care described herein.
- 9.6 **NO LIABILITY.** To the fullest extent permitted by law, neither Developer, the Association, nor any officer, director or member (collectively, the "Releasee") thereof shall be liable to any Owner or any Association member, any invitee of any Owner or Association member for any injury, damage, loss, liability, claim, or expense suffered or claimed on account of any decision, course of action, inaction, omission, error or negligence taken or made in good faith and which Releasee reasonably believed to be within the scope of its duties.

ARTICLE 10 RIGHT-OF-WAY AMENITIES

- 10.1 Owners are solely responsible for properly maintaining all Right-of-Way Amenities in the Neighborhood and hereby delegate the Association to perform such duty, provided, however, that such delegation shall not relieve Owners of their individual responsibility.
- 10.2 The City will be released from any and all past, present or future liability for any damage that may be caused at any time to any person or to any real or personal property resulting from or related to, directly or indirectly, the City allowing the Right-of-Way Amenities to be located in its right-of-way, or otherwise acting or failing to act with respect to the maintenance of the Amenities. The City will be further released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Amenities.
- 10.3 The Association, or upon its failure, the Owners, will indemnify and hold harmless the City, the Mayor, the members of the City Council and the employees and agents of the City from and against any and all losses, damages, costs and expenses, including reasonable attorneys fees, that may be incurred or suffered by any of them as a result of or in connection with any claims that may be asserted against any of them in connection with the Right-of-Way Amenities. The Association, or upon its failure, the Owners, will further be required to promptly reimburse the City for any public funds the City may expend with respect to maintenance of the Right-of-Way Amenities in the event the Association fails to maintain the same, although the City is under absolutely no obligation to so maintain.
- 10.4 Should the City determine that the Right-of-Way Amenities are endangering the public health, safety or welfare or have become unsightly or a nuisance, or interfere in any way with the city's use of the right-of-way, upon request of the City, the Association will remove or cause to be removed any or all Right-of-Way Amenities from the City's right-of-way. Should the Association fail to comply with the City's removal request, the City may remove the same and the Association, or upon its failure, the Owners, shall be obligated to reimburse the City for such removal.
- 10.5 The Association, or upon its failure, the Owners, shall maintain adequate liability insurance to cover all reasonable insurable risks associated with the maintenance of the Right-of-Way Amenities and the covenants contained herein.
- 10.6 The City shall be a third-party beneficiary of all provisions herein relating to the Right-of-Way Amenities and the City shall have the right to enforce all restrictions, obligations and other provisions regarding the Right-of-Way Amenities.

ARTICLE 11 DISCLOSURE REGARDING SURROUNDING PROPERTY

11.1 Much of the property bordering the Neighborhood is currently owned by Johnson County Wetlands Mitigation Bank, L.L.C. ("JCWMB"). A wetland mitigation bank ("Wetland Bank") has been established on said property for the purpose of compensatory mitigation for unavoidable impacts to waters of the United States under Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers. At such time as JCWMB is no longer required to own the property in order to obtain wetland mitigation credits (anticipated to occur between the years 2005 to 2010), JCWMB intends to donate the property in part to the Johnson County Park and Recreation District and in part to the Blue Valley School District. Both districts have agreed to accept the donations.

- 11.2 The Wetland Bank is a natural conservation area consisting of preserved and created riparian, wooded wetland, herbaceous wetland and aquatic habitats. It is subject to deed restrictions which mandate that the property be maintained as a natural conservation area in perpetuity. It is also subject to a public trail easement in favor of the Johnson County Park and Recreation District.
- 11.3 Restored areas of the Wetland Bank will be vegetated with native species of trees, shrubs, grasses, wildflowers and forbs, both introduced and volunteer. The Wetland Bank will become a balanced ecosystem capable of supporting a diversity of plants and animals. Owners and residents of homes in the Neighborhood should be aware that some plants commonly regarded as "weeds" and some "undesirable" animals (such as snakes, rodents and insects) are an integral part of the natural environment and may be present on the Wetland Bank property.
- Initially, water in the Wetland Bank will be maintained at a low level to allow marsh plants to germinate and grow. During the first two growing seasons (2000 and 2001), the water level will be raised gradually as marsh plants increase in size. During this period, tall annual weeds may dominate much of the property, but in the third to fifth year (2002-2005), more desirable perennial prairie and wetland plants will take over. In time, aquatic plants will spread to cover shallow marshes and will reduce the area of open surface water. Five to ten years after initial construction, trees and shrubs will begin to dominate the land which surrounds permanent pools of water. In future decades, sun-loving prairie species which were originally planted on much of the Wetland Bank property will give way to mature woods, much like the preserved forest along the banks of the Blue River. Owners should anticipate that the character and extent of views from lots, Common Facilities and public right-of-ways in the Neighborhood will change as trees, shrubs and other plants in the surrounding natural conservation area mature.

ARTICLE 12 MORTGAGES

- DEFAULTS. Notwithstanding anything in this Declaration to the contrary, no breach or default of any term, provision, covenant, condition, restriction or easement contained in this Declaration shall defeat or adversely affect the lien of any mortgage on any property in the Neighborhood; however, except as herein specifically provided otherwise, each and all of said terms, provisions, covenants, conditions, restrictions and easements shall be binding upon and effective against any Owner who acquires its title or interest by foreclosure, deed in lieu of foreclosure or the exercise of any other right or remedy under a mortgage, including the obligation to pay all Assessments and Costs arising or accruing thereafter, in the same manner as any other Owner. An Owner who leases his Lot to another party shall be responsible for assuring compliance by the tenant with all of the provisions of this Declaration, the Association's Articles of Incorporation and Bylaws and the rules and regulations adopted by the Association, all as amended and supplemented from time to time, and such Owner shall be jointly and severally responsible with the tenant for any violation by the tenant.
- 12.2 ENFORCEMENT AFTER FORECLOSURE SALE. Without limiting any other rights or remedies herein provided or otherwise available at law or equity, an action to abate any default or breach of any of the terms, provisions, covenants, conditions, restrictions or easements contained in this Declaration may be brought against a purchaser who has acquired title to or any interest in a Lot through foreclosure of a mortgage and the subsequent sale of the Lot (or through any equivalent proceeding), and against the successors in interest of such purchaser, even though the default or breach existed prior to the purchaser's acquisition of title to or interest in the Lot.
- 12.3 **EXERCISE OF OWNER'S RIGHTS.** During the pendency of any proceeding to foreclose a mortgage (including any period of redemption), the mortgagee, or a receiver appointed in any

such action, may (but need not), if and to the extent permitted by such mortgage or by the other documents evidencing or securing the loan secured by such mortgage, exercise any or all of the rights and privileges of the Owner under this Declaration, including the right to vote as a member of the Association in the place and stead of the Owner.

ARTICLE 13 CHANGES IN THE NEIGHBORHOOD

Notwithstanding anything in this Declaration to the contrary, Developer shall have and expressly reserves the right at any time and from time to time prior to the Turnover Date, in its sole discretion, without the consent of any Builder or other Owner, Association member or other party, (a) subdivide any Lot owned by Developer into two or more Lots, (b) combine any two or more Lots owned by Developer into a single Lot, (c) add to the Neighborhood such land contiguous to any part of the land then included in the Neighborhood (without reference to streets and right-of-ways) as may be owned or hereafter acquired or approved for addition by Developer, or (d) dedicate portions of the Neighborhood owned by Developer to any governmental or quasi-governmental body (including the City) if, in Developer's sole discretion, such dedication will benefit the Neighborhood as a whole. Any such change, addition or dedication shall become effective upon the recording with the Register of Deeds of an amendment to this Declaration, duly executed and acknowledged, setting forth the same. Such amendment to add land to the Neighborhood may contain such deletions, additions and modifications of the provisions of this Declaration which are applicable solely to such additional land as may be necessary or desirable, as solely determined by the Developer in good faith.

ARTICLE 14 RIGHTS OF THE DEVELOPER

Notwithstanding anything in this Declaration to the contrary, prior to the Turnover Date none of the restrictions contained in this Declaration shall prohibit or limit any act by Developer, its employees, agents or contractors or any other parties designated by Developer in connection with the construction, completion, sale or leasing of the Lots or any other part of the Neighborhood, except that Developer shall be bound by the Design Standards and laws and ordinances.

ARTICLE 15 **REMEDIES**

- 15.1 **GENERAL.** In the event of any breach or default by any Owner, occupant or other person or entity ("**Defaulting Party**") under this Declaration, the Association shall have all of the rights and remedies provided in this Declaration and otherwise available at law or equity, and may prosecute any action or other proceeding against the Defaulting Party for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided, or for the appointment or a receiver for the affected Lot, or for damages or specific performance, or for judgment for the payment of money and collection thereof, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the affected Lot or the solvency or the Defaulting Party. Any and all such rights and remedies may be exercised by the Association at any time and from time to time, cumulatively or otherwise.
- 15.2 **EXPENSES OF ENFORCEMENT.** All expenses of the Association, or any other person having rights of enforcement under this Declaration, in connection with any action or proceeding described in or permitted by this Article 15, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the highest rate allowable under Kansas law, shall be charged to and assessed against the Defaulting Party and shall

be deemed a special Assessment against the Owner of the affected Lot, with respect to which special Assessment the Association shall have a lien as provided in Article 3.

- 15.3 RIGHT TO CURE. The Association and any manager or managing agent retained by the Association shall have the authority (but not the obligation) to correct any breach or default under this Declaration and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the highest rate allowable under Kansas law, shall be charged to and assessed against the Defaulting Party as a special Assessment, with respect to which special assessment the Association shall have a lien as provided in Article 3.
- 15.4 **LIMITATION ON DEVELOPER'S LIABILITY.** Notwithstanding anything to the contrary in this Declaration, it is expressly agreed that neither Developer (including any assignee of Developer's interest hereunder) nor any member of Developer (or any member of any assignee of Developer) shall have any personal liability to the Association or to any Owner, tenant, occupant, Association member or other party arising under, in connection with or resulting from (including resulting from any action or failure to act with respect to) this Declaration, the Association, the Design Review Committee, the Association's Articles of Incorporation or Bylaws, the Design Standards or the rules or regulations adopted by the Association, or for any action taken or not taken pursuant to authority granted to Developer herein or therein, except, (a) in the case of Developer (or its assignee), to the extent of Developer's interest in the Neighborhood, and (b) in the case of a member of Developer (or a member of such assignee), to the extent of such member's interest in Developer (or in such assignee); and in the event of a judgment against Developer (or any member of Developer, or assignee of Developer, or member of any such assignee), no execution or other action shall be sought or brought thereon against any other assets or be a lien upon any other assets of the judgment debtor.

ARTICLE 16 AMENDMENT AND TERMINATION

- 16.1 AMENDMENT BY ASSOCIATION. The Association shall have the right (subject to the provisions of Article 16.2 and to the restrictions on amendment set forth in Article 16.3) to give additional powers or otherwise amend this Declaration by a written instrument setting forth the entire amendment, which amendment shall become effective when duly adopted, executed, acknowledged and recorded with the Register of Deeds. Any proposed amendment must be first approved by a majority of the directors of the Association and then adopted by the members of the Association. Amendments may be adopted by the members (a) at a meeting of the members by the affirmative vote of at least two-thirds of all members entitled to vote at such meeting, or (b) without a meeting if all members have been duly notified of the proposed amendment and if two-thirds of all members entitled to vote at such a meeting, if held, consent to the amendment.
- 16.2 **AMENDMENT BY DEVELOPER.** Notwithstanding any other provision of this Declaration to the contrary, prior to the Turnover Date, Developer shall have the sole and exclusive right to amend this Declaration without the approval of the directors or members of the Association or the approval of any Builder, other Owner or other party, by a written instrument setting forth the entire amendment, which shall become effective upon its recording with the Register of Deeds.
- 16.3 **TERM AND TERMINATION.** The provisions of this Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until January 1, 2025. Thereafter, unless one year prior to January 2, 2025, an instrument signed by at least two-thirds of all Association members then entitled to vote shall be recorded with the Register of Deeds directing the termination of this Declaration, this Declaration shall be automatically continued without any further notice for an additional period of 10 years and thereafter for successive periods of 10 years each;

provided, that within one year prior to the expiration of any such 10-year period, this Declaration may be terminated as above provided in this section.

16.4 WRITTEN CONSENT OF CITY REQUIRED. The written consent of the City shall be required prior to the termination of this Declaration in its entirety or to any amendment, modification or termination of any provision thereof regarding any Right-of-Way Amenities. If the Association requests such consent, it shall be made in writing to the City Clerk. The City shall have 60 days, upon receipt of the same, to rule on the request.

ARTICLE 17 GENERAL PROVISIONS

- 17.1 **NOTICES.** All notices, requests, consents, approvals and other communications required or permitted under this Declaration or the Association's Bylaws shall be in writing and shall be addressed to Developer at 5909 Martway, Suite 200, Mission, Kansas 66202, to the Association at the address specified in the Association's Bylaws, and to each Owner and member at the last address shown for such Owner or member on the records of the Association. Any party may designate a different address or addresses for itself by giving written notice of its request. Notices, requests, consents, approvals and other communications shall be deemed delivered when mailed by United States mail, postage prepaid, when delivered in person or by courier, or delivered via facsimile transmission (fax).
- 17.2 **ASSOCIATION ADDRESS.** The Association shall notify each member whose address is listed with the Association of the time and place of regular and special meetings of the members of the Association, and the place where payments shall be made and any other business in connection with the Association may be transacted.
- 17.3 **PERFORMANCE BY DEVELOPER.** Prior to the incorporation of the Association, Developer shall have the right, at its option, to perform the duties of the Association, levy and collect the assessments and otherwise exercise the rights and powers herein given to the Association in the same manner as if such powers and duties were herein given directly to Developer. The Association shall not assume any of the rights or powers herein provided for without the consent of Developer and its relinquishment of such rights and powers; provided, however, that nothing set forth herein shall be deemed to require Developer to perform or satisfy any duty or obligation to Owners or otherwise.
- ASSIGNMENT BY DEVELOPER. The Developer shall have the right and authority to assign, convey, transfer and set over any and all of the benefits, privileges, rights, powers, reservations and easements of Developer herein granted or reserved to any party which assumes the obligations, duties and responsibilities of Developer pertaining to the particular benefits, privileges, rights, powers, reservations and easements assigned. Upon the recording with the Register of Deeds of a document of assignment whereby the assignee assumes and agrees to perform such obligations, duties and responsibilities, such assignee shall, to the extent of such assignment, have the same benefits, privileges, rights, powers, reservations and easements and be subject to the same obligations, duties and responsibilities with respect thereto as are herein given to and assumed by Developer, and Developer shall thereupon be released and relieved from all liability with respect to such obligations accruing from and after the date of recording of such assignment. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the benefits, privileges, rights, powers, reservations and easements to any other party which assumes the obligations, duties and responsibilities with respect thereto in the same manner as herein set forth.
- 17.5 **TERMINOLOGY.** The words "include," "includes" and "including" shall be deemed followed by the phrase "without limitation." The words "herein," "hereof," "hereunder" and similar

terms shall refer to this Declaration unless the context requires otherwise. Whenever the context so requires, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural and vice versa.

- 17.6 **SEVERABILITY.** If any provisions of this Declaration or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration and of the application of such provision in other circumstances shall not be affected thereby.
- 17.7 RULE AGAINST PERPETUITIES; OBSERVANCE OF LAWS. The Association shall at all times observe all applicable state, county, city and other laws or regulations. If at any time any of the easements, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule of law known as the "Rule Against Perpetuities," then such provision shall become null and void, but no other parts of this Declaration not in conflict therewith shall be affected thereby.
- 17.8 **APPROVALS.** Wherever the approval or consent of a Design Review Committee or any other person or entity is required, such approval or consent shall require the prior written approval of the Design Review Committee or such other approving or consenting party, to be given its sole discretion.

ARTICLE 18 COVENANTS RUNNING WITH THE LAND

Each grantee of Developer and of any Builder or other Owner, by the acceptance of a deed, conveyance or other instrument evidencing or creating an interest or estate in any land within the Neighborhood, and each person acquiring a membership in the Association, and the heirs, legal representatives, successors and assigns of each of the foregoing, accepts the same subject to all of the terms, provisions, covenants, conditions, restrictions, reservations, easements and liens and subject to all of the rights, benefits and privileges of every kind which are granted, created, reserved or declared by this Declaration, and all imposition and obligations hereby imposed, all of which shall be deemed covenants running with the land and equitable servitude, and shall bind every person and entity at any time having any interest or estate in any land within the Neighborhood, and shall inure to the benefit of any such person or entity, as though the provisions of this Declaration were reflected at length in each and every deed, conveyance or other instrument evidencing or creating such interest or estate.

IN WITNESS WHEREOF, Developer has executed this Declaration as of the date first above written.

WILDERNESS liability company		L.L.C.,	a	Kansas	limited
Ву:				<u></u>	<u></u>
Clay C. Blair, III	, Member				

STATE OF KANSAS)		
COUNTY OF JOHNS)ss. ON)		
	,		
ON THIS	day of	, 2000, before me, the undersigned, a Notary Public in	n and
		ared Clay C. Blair, III, to me personally known to be the personal transfer to the personal transfer transfer to the personal transfer transfer to the personal transfer transfer transfer transfer to the personal transfer	
		ing instrument, who, being by me duly sworn, acknowle .L.C., a Kansas limited liability company, and that he executed the second state of the company in the company is a second	
such instrument on bel	half of said company	y by authority of its members, and said person acknowle	
the execution of said in	strument to be the ac	ct and deed of said limited liability company.	
IN WITNESS	WHEREOF, I have !	hereunto set my hand and affixed my official seal the day	y and
year last above written.		-	
		Notary Public	
		Printed Name:	
My Commission Expire	es:		
1			

EXHIBIT A TO DECLARATION OF WILDERNESS VALLEY

BUILDING STANDARDS AND REQUIREMENTS

1. Permitted Height of Residences.

No portion of a Residence erected on any Lot shall exceed three (3) stories in height above ground level at any point without the prior written consent of the Design Review Committee.

- 2. Frontage of Residences on Streets.
- (a) Any Residence erected wholly or partially on any "Corner Lot" (defined as any Lot with more than one street contiguous to it, as designated by the Design Review Committee) shall present an attractive frontage on contiguous streets.
- (b) If a portion of a Corner Lot is acquired by the Owner of an inside Lot contiguous to said Corner Lot, then, as to the portion of such Corner Lot so acquired, the provisions hereof requiring a Residence erected on a Corner Lot to front or present an attractive frontage on contiguous streets shall not be operative, but the part of the Corner Lot so acquired shall be deemed to be a part of the inside Lot to which it is contiguous.

3. Setback of Residences.

- (a) Setback Lines. All Residences and other Improvements shall be located on each Lot as approved by the Design Review Committee and in full compliance with setback lines shown on the Plat or established by the Design Review Committee. The Design Review Committee may establish new building setback lines on any Lot with the express written consent of the Lot Owner, provided such new setback lines comply with City codes.
- (b) Projections. Notwithstanding the setback lines shown on the Plat or those established by the Design Review Committee, cantilevered upper stories, balconies, bay, bow or oriel windows, cornices, eaves, chimneys, downspouts and decorative elements may project no more than three feet over the building setback lines for each Lot. Unenclosed, covered porches and vestibules not more than one story in height may project up to six feet beyond front building lines. No provisions herein shall be construed to permit any portion of any structure to project beyond the boundary of the Lot upon which it is erected.
- (c) Sight Lines. No fence, wall, structure or plant materials which obstruct sight lines at elevations between two and six feet above the streets shall be placed or permitted to remain on any Corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points twenty-five feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the extension of street right-of-way lines. The same sight-line limitations shall apply to any Lot within ten feet from the intersection of the right-of-way property line with the edge of a driveway. Trees shall be permitted to remain within such areas if the foliage line is maintained at a height sufficient to prevent obstruction of sight lines.
 - 4. Required Size and Type of Residence.
- (a) No Residence erected on any Lot shall contain less than the minimum number of square feet of Enclosed Floor Area (as hereinafter defined) shown on the following table.

Enclosed Floor Area Minimums (in square feet)

	<u>Class A</u>	<u>Class B</u>
1 Story Residence	2,400	2,000
1.5 Story Residence		
Main Floor	2,000	1,750
Secondary Floor	1,000	750
2 Story Residence		
First Floor	1,500	1,250
Second Floor	1,500	1,250

For purposes of this Section 4:

- "Class A" refers to all Lots in Wilderness Valley First Plat, and lots that may be designated in future subdivision phases,
- "Class B" refers to Lots that may be designated in future subdivision phases,
- A "Reverse 1.5 Story Residence" (a ranch-style house with a ground level walk-out basement) shall be categorized along with 1.5 story Residences, and
- A Residence's "Enclosed Floor Area" shall mean and include, in all cases, areas on the first floor, second floor (if applicable) and basement level (in cases of Reverse 1.5 Story Residences) enclosed and finished for all-year occupancy, computed utilizing outside measurements of the Residence, and shall not include any areas in garages, porches or attics, or basements (except in cases of Reverse 1.5 Story Residences).
- (b) No Residence designated as a "ranch with basement garage" or a "bi-level" by the Design Review Committee shall be constructed on any Lot.
- (c) The Design Review Committee reserves the absolute and incontestable right to determine whether any Residence violates the foregoing prohibition and whether the Enclosed Floor Area of any Residence meets the minimum requirements provided for in this Section and hereby also reserves the right to approve deviations from the aforementioned building sizes and to modify any of the Enclosed Floor Area requirements set forth in this Section. The Design Review Committee's determination(s) in this regard shall be final.
 - 5. Time Limits for Construction or Reconstruction; Penalty for Violation.

Unless the following time periods are expressly extended by the Design Review Committee, construction of any Residence on any Lot shall be commenced within 30 days following the date of delivery of a warranty deed from the Developer to the purchaser of such Lot, shall be diligently pursued, and shall be completed within 240 days after commencement. Improvements shall not be left in a partly finished condition for more than 30 days without written approval from the Design Review Committee. For the purposes of this section, commencement of construction is deemed to be the date a building permit is issued by the City. In the event construction is not commenced within such 30-day period (or extension thereof), the Developer shall have, prior to commencement of construction, the right to repurchase the Lot at its original sale price. No Owner of a Lot in violation of this construction commencement provision shall be entitled to reimbursement for taxes, interest, or other expenses paid or incurred by or for such Owner.

Subject to the provisions of Article 5.2 of the Declaration of Wilderness Valley, in the event of fire, windstorm, vandalism or other casualty, no Improvements shall be permitted to remain in damaged condition for longer than three months before said damaged Improvements are demolished and removed from the Lot or before repairs commence. Such repairs shall be completed within six months after commencement.

If weather conditions, strikes, lock-outs or unavoidable shortages of materials cause delays in such construction or reconstruction, the time allowed for completion shall be extended for a period equal to the period of delay from such cause.

Any Owner of a structure in violation of this paragraph shall pay the Association a fine of no more than One Hundred Dollars (\$100.00) per day, as determined by the Association for each day the violation continues. The fine provided for herein, if not paid when due by said Owner, shall become a lien upon the real estate upon which the structure in violation of this section is located; provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed upon said real estate. All fines shall be due thirty (30) days from the date of the written notice of the violation provided by the Association to the Owner of any Lot upon which the violation occurs, and if the fine is not paid within said thirty-day period, the fine shall bear interest at the rate of eighteen percent (18%) per annum until paid. Any such interest accruing shall also be a lien upon the real estate and all such liens may be enforced by the Developer or the Association in any court in Johnson County, Kansas, having jurisdiction of suit for the enforcement of such liens.

6. Fences, Walls, Enclosures, Decks, Outbuildings.

No fences, walls, enclosures, decks, outbuildings or other detached structures appurtenant to the Residence shall be constructed, placed, maintained or altered upon any Lot unless the location, design, configuration, height, color and materials are prior approved in writing by the Design Review Committee.

Fences shall be black wrought iron or untreated cedar in one of three styles shown on the attached Exhibit A-1. Fences shall not exceed 48 inches in height unless specifically approved for a greater height by the Design Review Committee. Privacy fences over 48 inches in height, but not taller than 72 inches, may be permitted if located within the building setback lines and no further than 20 feet from the Residence, and if specifically approved in writing by the Design Review Committee. Such privacy fence shall be an approved style as shown on Exhibit A-1 or an alternate style deemed by the Design Review Committee to be compatible with the style of the Residence.

On the following Lots only wrought iron fences are allowed outside the building setback lines or beyond 20 feet from the Residence:

• Wilderness Valley First Plat, Lots 1 through 16, 26, 27, 37 and 38;

On the following Lots, no fences are allowed outside the building setback lines or beyond 20 feet from the Residence.

• Wilderness Valley First Plat, Lots 38 through 44, 50, 51, 54 and 55;

No animal pens or runs shall be erected without the express written consent of the Design Review Committee.

Decks which exceed 36 inches in height above ground level shall be built with supporting posts at least 6 inches square. If built of material other than cedar, posts and railings on such decks shall be stained or painted the same color as the trim or body of the Residence.

7. Surface Drainage.

Finish grading shall adequately handle all run-off water in a reasonable manner which is fully compatible with neighboring Lots and with the Developer's overall site grading plan.

8. Roofs.

Roof materials, colors and brands shall be specifically approved in writing by the Design Review Committee.

Roofs shall be covered with clay or concrete tile; slate; weathered-wood colored layered composition shingles (such as Celotex "Ambassador" brand); or other materials which simulate wood, tile or slate as approved in writing by the Design Review Committee. Tar and gravel roofs are not allowed. Bronze-colored flashing shall be used in valleys.

Roofs shall have a minimum pitch of 6/12. Roof planes which are visible on any elevation of a Residence must slope down from the ridge at the same pitch. Exceptions, including shed roofs, may be permissible if appropriate to the architectural style of the Residence and if approved by the Design Review Committee.

9. Exterior Wall Materials.

Exterior walls of all buildings, structures and all appurtenances thereto shall be of wood lap siding, wood shingles, stone, brick, stucco, plate glass, or a combination thereof. Siding which simulates such materials may be approved on a case-by-case basis by the Design Review Committee.

If more than one type of exterior siding material is used on a Residence, siding materials must be applied in a manner which corresponds to the structural form of the house. Siding materials applied on the front of a Residence must wrap around outside corners and terminate at inside corners. The Design Review Committee may grant variances to the provisions of this section if it determines, in its sole discretion, that the proposed design complies with its overall intent.

10. Exterior Colors.

Neutral, earth-tone colors in medium to dark shades are encouraged so that structures blend with the natural setting of the Neighborhood. Bright primary colors and pastels of primary colors shall not be permitted. Exterior colors and color combinations that, in the opinion of the Design Review Committee, are inharmonious shall not be permitted. All trim must be of the same color consistently on all side of the home. Each Owner must submit a color plan showing the color of the exterior walls, shutters, doors, trim, etc., to the Design Review Committee prior to initial construction on any Lot. The Design Review Committee shall have final approval of all exterior color plans.

11. Windows and Shutters.

Windows shall be constructed of wood or clad wood and glass. Window shutters shall be a width equal to one-half the width of the associated window opening and shall be designed and constructed so as to appear operable. Unpainted metal, bright finished or colored window frames, window screens, or accessories shall not be permitted. Tinted and mirror finishes on window glass are specifically prohibited.

12. Gutters and Downspouts.

Exposed metal gutters and downspouts other than copper shall be painted to match the trim or body color of the Residence.

13. Chimneys.

The exterior design and material selections for all chimneys must be approved by the Design Review Committee. The exterior surfaces of all chimneys shall be faced with brick, stone, or stucco. Any chimney which is revealed on an exterior façade shall be supported by a full foundation. All chimney caps shall be low profile.

14. Architectural Detailing.

Architectural detailing shall be consistent on all sides of a Residence. Trim details which are used on the front of the house should also be employed on the sides and rear. Window trim shall be a minimum of 4" wide; fascia and frieze boards shall be a minimum of 6" wide. Variances to minimum widths may be granted by the Design Review Committee if determined to be compatible with the architectural style of the Residence.

15. Paint, Stain.

Wood exteriors, except roofs, shall be covered with a workmanlike finish of two coats of high quality paint or stain, however certain natural siding materials which are intended to weather (such as cedar shingles) may be exempted from this requirement.

16. Exposed Concrete Foundations and Walls.

The exterior surface of all concrete foundations and walls which are exposed in excess of 18 inches above final grade shall be painted the same color as the house. Foundations and walls which are exposed in excess of 36 inches above finish grade shall be covered with finished materials compatible with the structure.

17. Landscaping.

A detailed landscape plan must be submitted to and approved by the Design Review Committee prior to installation. Extensive landscaping is encouraged, and a minimum expenditure of \$5,000 for front yard landscaping (excluding sod and irrigation systems) is required. In addition, Owners shall install and maintain any trees and shrubs which are shown on the Master Landscape Plan and designated for planting by individual Owners. Such trees and shrubs shall be of the size, variety and placement shown on the Master Landscape Plan or as otherwise approved by the Design Review Committee. All yards and the unpaved portions of street right-of-ways and easements contiguous thereto shall be fully sodded or planted with ground covers or covered with mulch, provided, however, that no duty to clear any tract of trees, bushes, shrubs, or natural growth which are kept reasonably attractive shall be implied. Removal of any living tree with a trunk larger than six inches in diameter (measured six inches above ground level) must be approved in writing by the Design Review Committee. Both sod and required landscape installation shall be completed prior to first occupancy of the Residence, or the Owner shall be required to escrow funds for landscape improvements, in an amount calculated by the Design Review Committee, before occupancy of the Residence shall occur.

Many Lots in Wilderness Valley are adjacent to the Johnson County Wetlands Mitigation Bank, (the "Wetland Bank"), a restored natural ecosystem designed to provide a diversity of native plant communities and wildlife habitats. The Wilderness Valley neighborhood is intended to coexist in

harmony with its natural surroundings, both aesthetically and environmentally. The following landscape restrictions have been promulgated to further these objectives:

- (a) The use of indigenous species of trees, shrubs and perennials is encouraged on all Lots in Wilderness Valley so the Neighborhood will blend with its natural surroundings. The use of exotic species or cultivars of trees and shrubs which are visually incompatible with naturally occurring plants is strongly discouraged and may not be permitted by the Design Review Committee. On any portion of any Lot within 25 feet of Wetland Bank property, no trees and shrubs except those included in the list of "Indigenous and Compatible Tree & Shrub Species" (Exhibit A-2) or those specifically approved by the Design Review Committee shall be planted.
- (b) Lawns backing to the Wetlands Bank shall be sodded with a blend of 80% drought-tolerant, fine-leaf fescue and 20% Kentucky bluegrass. For purposes of this provision, this sod requirement shall apply to Wilderness Valley First Plat Lots 1-16, 26, 27, 37-44, 50, 51, 54 and 55, inclusive. Additional lots may be specified in future phases. To reduce pollution of adjacent streams and wetlands by chemical contaminants, excessive irrigation and the overuse of fertilizers, weed killers, pesticides and fungicides is strongly discouraged.

18. Driveways.

Large expanses of driveway surfaces shall be minimized. Specific approval for circle driveways must be obtained in writing from the Design Review Committee before construction thereof on any Lot. The use of asphalt, gravel or natural driveways is specifically prohibited. Finish colors for driveways other than untinted concrete must be specifically approved by the Design Review Committee. Driveway approaches within public street right-of-ways shall be made of concrete, shall conform to city standards, and shall be no more than 16 feet in width (excluding radii).

19. Garages.

All Residences shall have private garages for not less than two cars. Carports are specifically prohibited. Residences constructed on Lots 7-13, 16-25, 28-36 and 39-49 (inclusive), Wilderness Valley First Plat shall have side-entry garages unless otherwise approved in writing by the Design Review Committee.

20. Outdoor Lighting.

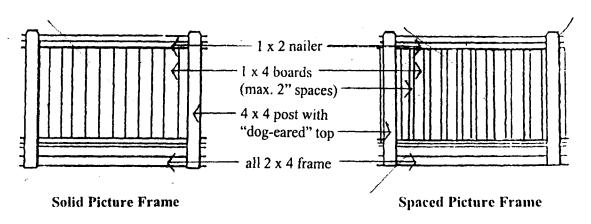
The location, style, color and intensity of all outdoor light fixtures, other than decorative Christmas lights, must be approved by the Design Review Committee. To avoid glare and excessive light spillage, outdoor light sources shall be concealed in recessed or "can" style fixtures except that:

- (a) decorative incandescent light fixtures without concealed light sources may be attached to the exterior of any Residence if such fixtures are located no higher than ten feet above ground level and are illuminated by no more than 40 watts per fixture, and
- (b) high-intensity light fixtures without concealed light sources may be attached to any Residence if used exclusively for security purposes and not illuminated for prolonged periods.

EXHIBIT A-1

WILDERNESS VALLEY FENCE STYLES

UNTREATED CEDAR



BLACK WROUGHT IRON

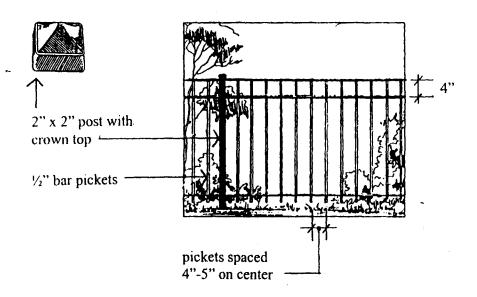


EXHIBIT A-2 TO DECLARATION OF WILDERNESS VALLEY

INDIGENOUS AND COMPATIBLE TREE AND SHRUB SPECIES

EVERGREEN/CONIFER TREES:

Species	Common Name	Mature Size
Juniperus virginia	Juniper, Eastern Red Cedar	50'
Pinus strobus	White Pine	75'
Picea abies	Norway Spruce	60'

SHADE TREES:

Species	Common Name	Mature Size
Acer saccharinum	Silver Maple	75'
Acer saccharum	Sugar Maple	85'
Betula nigra	River Birch	60'
Carpinus caroliniana	Hornbeam	30'
Carya illinoenis	Pecan	100'
Carya ovata	Shagbark Hickory	85'
Catalpa speciosa	Catalpa	65'
Celtis laevigata	Sugarberry	80'
Celtis occidentalis	Hackberry	75'
Cercis canadensis	Redbud	40'
Diosypros virginiana	Persimmon	45'
Fraxinus americana	White Ash	80'
Fraxinus pennsylvanica	Green Ash	60'
Morus rubra	Red Mulberry	50'
Platanus occidentalis	Sycamore	90'
Populus deltoides	Cottonwood	90'
Prunus serotina	Black Cherry	80'
Quercus bicolor	Swamp White Oak	65'
Quercus imbricaria	Shingle Oak	60'
Quercus macrocarpa	Bur Oak	60'
Quercus palustris	Pin Oak	70'
Salix nigra	Black Willow	75'
Sassafras albidium	Sassasfras	45'
Ulmus rubra	Slippery Elm/Red Alder	70'

SHRUBS:

Species	Common Name	Mature Size
Amorpha fruticosa	Indigo Bush	5'
Cephalanthus occidentalis	Buttonbush	20'
Cornus amomum	Silky Dogwood	10'
Curnus Drummondii	Rough-leaved Dogwood	
Hamamelis virginiana	Witch-hazel	25'
Ilex decidua	Deciduous Holly	10'
Lindera benzoin	Northern Spicebush	10'
Rhus aromatica	Aromatic Sumac	25'
Rhus copallina	Shinning Sumac	25'
Salix exigua	Sand Bar Willow	10'
Sambucus canadensis	Elderberry	15'
Symphoricarpus Orbiculatus	Coralberry	
Viburnum lentago	Nannyberry Viburnum	20'
Viburnum prunifolium	Blackhaw Viburnum	20'
Viburnum rufidulum	Rusty Blackhaw Viburnum	20'